

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NOS. 93-503-C & 94-289-C - ORDER NO. 94-767
AUGUST 4, 1994

IN RE: Docket No. 93-503-C - Investigation of)	ORDER
Level of Earnings of Southern Bell)	RULING
Telephone & Telegraph Company.)	ON
)	VARIOUS
AND)	MOTIONS
)	
Docket No. 94-289-C - Petition for)	
Incentive Regulation.)	
)	
)	

This matter is before the Public Service Commission of South Carolina (the Commission) on several motions filed by the South Carolina Television Association (SCCTA) and Southern Bell Telephone & Telegraph Company (Southern Bell or the Company). After considering the written motions, the oral arguments of the parties, and the applicable law, the Commission rules on each motion as set forth below.

SCCTA's Motion to Dismiss. The SCCTA moves to dismiss Southern Bell's Petition to Reinstate Incentive Regulation (the Petition) on the ground that the Petition seeks retroactive approval of an incentive regulation plan previously declared invalid by the South Carolina Supreme Court. South Carolina Cable Television Association v. Public Service Commission, __S.C.__, 417 S.E.2d 586 (1993). The Commission disagrees.

As noted in the Petition, Southern Bell is seeking incentive regulation pursuant to S.C. Code Ann. §58-9-575. This legislation was enacted by the General Assembly after South Carolina Cable Television Association v. Public Service Commission was issued. Further, in Order No. 94-486 (May 26, 1994), the Commission already stated it would treat Southern Bell's Petition as a request to operate under incentive regulation pursuant to Section 58-9-575. For these reasons, the Commission denies the SCCTA's Motion to Dismiss.

SCCTA's Motion to Make More Definite and Certain. The SCCTA moves the Commission to require Southern Bell to make its Petition to Reinstate Incentive Regulation more definite and certain. Having found that Southern Bell's Petition should not be dismissed, the Commission nonetheless concludes that the Petition should be clarified to set forth the following particulars:

- (a) the basis for the request for incentive regulation, including whether the right to participate in additional profits is sought under Section 58-9-330;
- (b) what services are subject to competition; and
- (c) the precise terms of the incentive regulation plan for which approval is sought, as well as all financial data and other information relating to or supporting same, as required by 26 S.C. Code Ann. Regs. 103-834.

Southern Bell should not, however, be required to clarify its Petition to state the nature and extent of those services which it contends are competitive. As stated by counsel for the SCCTA during oral argument, the nature and extent of such competition can

be determined during discovery and need not be stated in a pleading. Further, Southern Bell should not be required to set forth what economics, efficiencies, and improvements in methods of service have been instituted as counsel for Southern Bell stated during oral argument that the Company is not seeking regulation under Section 58-9-330.

SCCTA's Motion to Compel. The SCCTA moves to compel Southern Bell to respond to certain interrogatories and to its request for production of documents. The Commission concludes that Southern Bell should be and is hereby required to respond to Interrogatory 1-3 by identifying studies and surveys which pertain to intrastate competition. Further, Southern Bell is directed to respond to Interrogatories 1-6 and 1-7 with regard to intrastate services it considers to be competitive. The Company shall respond to Interrogatory 1-8. Southern Bell shall respond to Interrogatory 1-9 (a) by identifying its witness(es) who will testify regarding the existence of intrastate competition. Southern Bell shall respond to Interrogatories 1-9 (b) and 1-9 (c) as modified by this Order in 9 (a). Southern Bell shall respond to Interrogatory 1-11 by identifying any documents which relate to intrastate competition, the eight (8) factors described in Section 58-9-575, or to efficiency, economy or improvements in methods of service. In regard to Interrogatory 1-12, Southern Bell shall be under a continuing duty to identify persons it intends to call as witnesses, at such time as Southern Bell identifies a witness.

Southern Bell shall not be required to respond to

Interrogatory 1-10. During oral argument counsel for Southern Bell stated the Company is not seeking regulation under Section 58-9-330.

Southern Bell is directed to provide the Commission Staff with all documents which are responsive to the SCCTA's Request for Production of Documents No. 1. Thereafter, the Commission Staff shall review the documents and inform the Commission as to the volume of the documents. The Commission reserves its consideration of the SCCTA's motion on these documents until such time as the Commission Staff notifies the Commission of its review of these documents.

Southern Bell's Motion for Sanctions. Southern Bell asserts the Commission should sanction the SCCTA because it has barraged the Company with burdensome and costly motions. The Commission denies this motion. The Commission has granted in part the SCCTA's motions and finds that sanctions are inappropriate.

Southern Bell's Motion to Compel. Southern Bell moves to compel the SCCTA to respond to certain interrogatories. The Commission concludes that the SCCTA should be and is hereby required to identify any intrastate services it currently provides which are competitive with Southern Bell's services. The remainder of Southern Bell's Motion to Compel is denied.

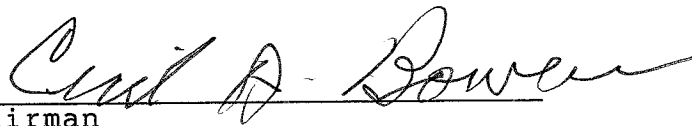
The Commission shall allow the Commission Staff to determine the appropriate times in which the SCCTA and Southern Bell shall provide the discovery responses required by this Order. Southern Bell shall clarify its Petition for Incentive Regulation in

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accordance with this Order within ten (10) days after receipt of
this Order.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

Acting Chairman 

ATTEST:

Deputy Executive Director 

(SEAL)